BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 6727 OF 2021

Ketan Shah ....Petitioner.
V/s
The State of Maharashtra .....Respondent

WITH
CRIMINAL WRIT PETITION NO.6795 OF 2021

Sanjay Shah ....Petitioner.
V/s
The State of Maharashtra .....Respondent

Dr. Sujay Kantawala a/w Nimay Dave, Teresa Daulat, Mohanish Patkar, Siddharth Nones, Shivani Prasad i/b TRD Associates for the Petitioner in both the above Petitions.

Mr. K.V. Saste, APP for the Respondent/State in both the above Petitions.

Mr. Abhishek Nandimath for Respondent Nos. 6 and 7 in both the above Petitions.

CORAM: NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.

DATE: 12TH JUNE, 2023.

P.C.:- ***(Per Nitin W. Sambre, J.)***

1] Both these Petitions are by the accused persons in Crime No.0295 of 2021 registered by Khalapur Police Station for the offence punishable under Sections 120-B, 420, 465, 467, 471 and 506 of the Indian Penal Code. After investigation of the aforesaid offence, Petitioners are charge-sheeted which has led to registration of R.C.C. No.91 of 2022, which is pending on the file of Judicial Magistrate First Class, Khalapur.

2] Facts necessary for deciding both these Petitions are as under:-

3] The subject matter of the above offence is, immovable properties which are specifically described in the FIR. The said properties were owned by Petitioner Sanjay and said Petitioner has created interest in favour of Respondent No.3 – Rakesh Sehgal vide Sale Deed dated 30.04.1996. Subsequent thereto, Accused Sanjay vide Sale Deed dated 29.01.1997 transferred the very same properties in favour of Accused-Ketan Shah without cancelling earlier Sale Deed of 1996 in favour of Respondent No.3. Accused-Ketan Shah accordingly transferred the immovable properties mentioned in the FIR to Respondent Nos. 6 and 7 vide registered Sale Deed dated 04.12.2009. Respondent Nos. 6 and 7 converted aforesaid land to N.A. use by obtaining appropriate permission from the revenue authorities. During title search, said Respondents noticed defect in title as Accused Sanjay has already sold the land to Respondent No.3 - Rakesh Sehgal in 1996. Since already the land was sold by Accused Sanjay to Respondent No.3 - Rakesh Sehgal in 1996 and without cancelling the said Sale Deed, land was transferred to Accused Ketan Shah, who, in turn, transferred the same to Respondent Nos. 6 and 7, offfence referred to above came to be registered, investigated and Petitioners are chargesheeted.

4] While questioning the aforesaid, Mr. Sujay Kantawala, Counsel for the Petitioners would urge that title stood vested in favour of Respondent Nos. 6 and 7 on 04.12.2009 and FIR in question came to be registered on 09.12.2021 i.e. almost after a period of 11 years. There is no plausible explanation submitted by Respondent Nos. 6 in the complaint for delayed FIR. Drawing support from the judgment of the Apex Court in the case of *Kishan Singh (Dead) through LRs vs. Gurpal Singh and Ors* reported in **(2010) 8 SCC 775**, he would urge that delayed FIR cannot be sustained. According to him, filing of FIR after a lapse of 11 years, that too in a matter arising out of contractual obligation amounts to abuse of remedy available in criminal law. Hence, it is urged that prosecution is liable to be quashed and set aside. Support is drawn from the judgment of the Apex Court in the matter of *Anand Kumar Mohatta and Anr. vs. State (NCT of Delhi*) *Department of Home and Anr.* reported in **(2019) 11 SCC 706.**

He would further urge that perusal of FIR and other investigation papers would reflect that necessary ingredients of offence of cheating, forgery cannot be inferred. In that view of the matter, prosecution is liable to be quashed and set aside. As far as Accused-Ketan Shah is concerned, further contention is, since he has no privity of contract with Respondent No. 3 - Rakesh Sehgal, the said Accused Ketan can be termed as purchaser of properties without notice. According to him, neither the Petitioners have deceived Respondent Nos. 6 and 7 nor they were induced to purchase the said properties.

His further contentions are, dispute between Respondent Nos. 6

and 7 and Petitioners-Accused is in relation to immovable properties. The vesting of title in Accused-Sanjay and transfer of the same to Accused-Ketan Shah on 29.01.1997 sufficiently establishes clear title of both the accused persons. According to Counsel for the Petitioners, once registered Sale Deed dated 04.12.2009 was executed in favour of Respondent Nos. 6 and 7 by Accused Ketan Shah and Respondent Nos. 6 and 7 who were put in possession of the said properties immediately thereafter, there is no element of cheating or forgery. He would urge that from reading of the contents in the FIR it is clear that dispute is civil in nature and the only remedy available to Respondents Nos. 6 and 7 is that of lodging civil proceedings. According to him, criminal proceedings are initiated by adopting arm twisting so as to force the Petitioners to arrive at a settlement. As such, his contentions are, not only the FIR and charge-sheet but entire criminal prosecution is liable to be quashed and set aside.

5] Mr Saste, learned APP appearing on behalf of the Respondent/State assisted by Mr. Nandimath, Counsel appearing for Respondent No. 6-complainant and Respondent No. 7, would urge that once it is not disputed that title stood vested in Respondent No. 3 - Rakesh Sehgal through registered Sale Deed dated 30.04.1996, the Accused Sanjay ceased to have any right, title or interest in the properties. As such, according to them, transfer of title of the properties mentioned in the FIR by Accused Sanjay to Accused Ketan Shah is purely with intention not only to practice fraud on Respondent No.3 but also on Respondent Nos. 6 and 7. Both the accused appear to have acted hand-in-glove and were of close acquaintance. As such it is claimed that not only revenue record was forged to demonstrate absolute and clear title of Accused Sanjay which was transferred to Accused Ketan Shah but the accused persons with common intention have practiced fraud and cheated Respondent Nos. 6 and 7. As such, prayer is for dismissal.

6] We have appreciated aforesaid submissions.

7] With the assistance of respective Counsel, we have gone through the relevant documents including pleadings of the Petitioners in support of prayer for quashing.

8] The FIR came to be lodged on 09.12.2021 for the offence which is alleged to have been committed from 30.04.1996 to 09.12.2021. Vide Sale Deed dated 29.01.1997, Accused Sanjay transferred the land mentioned in the FIR to co-accused Ketan Shah for valuable consideration, who, in turn transferred the said properties vide Sale Deed dated 04.12.2009 in favour of Respondent Nos. 6 and 7. The accused persons instead of getting the land mutated in the name of Respondent No. 3 - Rakesh Sehgal to whom the land was transferred in 1996, continued their names in the revenue record as owners of aforesaid properties. The said revenue entries alongwith Sale Deed in favour of Accused Ketan Shah by the Accused Sanjay on 29.01.1997 were used to gain confidence of Respondent Nos. 6 and 7. Respondent Nos. 6 and 7 were made to believe that accused persons have clear and marketable title, though title stood vested in 1996 in Respondent No.3 - Rakesh Sehgal and Respondent No.6 and 7 were induced to pay money.

9] In the light of aforesaid observations, if we consider the law laid down by the Apex Court in the matter of Kishan Singh, cited supra qua the claim of delay in lodging FIR, what is to be noted is, accused persons continued their names on the revenue record instead of mutating the name of Respondent No. 3 - Rakesh Sehgal as owner in whose favour vesting of title by Accused Sanjay can be inferred not only from the pleadings but also from title deed which is produced on record. Pleadings by Accused Sanjay in para 7.18 specifically state as under:-

> "7.18………… In such circumstances, it is also evident that even if there was a prior sale deed in 1996 (though the same is not true), no title is conferred upon Respondent No.3 by the same and there is no loss whatsoever caused to Respondent No.6…….."

There is no specific denial by Petitioner Sanjay that he has not created third party interest in favour of Respondent No. 3 - Rakesh Sehgal. Contentions are, Respondent Nos.6 and 7 have perfected their title by virtue of adverse possession. Fact that Respondent Nos.6 and 7 are in real estate business is not in dispute. In this backdrop, claim of delayed FIR is required to be appreciated. Fact remains that after purchase of the properties by the Respondent Nos. 6 and 7 in 2009, FIR is lodged after 11 years. In the FIR, it is specifically mentioned that during title search, they came to know about their defective title and forgery and cheating practiced by the accused persons.

10] Merely because Sale Deed is of 2009, that by itself will not lead to draw an inference that FIR is lodged at belated stage. This Court is required to look for plausible explanation for such delay. Explanation given by Respondent Nos.6 and 7 for lodging FIR after 11 years from the date of vesting of title in them is, discovery of fraud before lodging FIR. The explanation tendered by them appear to be plausible one and same cannot be formed to be the basis at this preliminary stage of the trial for ordering quashing of the offence. Though Petitioners have placed reliance on the judgment of *Kishan Singh*, cited supra, Apex court has however noted that this Court can consider plausible explanation for filing belated FIR. In the aforesaid backdrop, claim that there is delayed FIR is liable to be rejected. The second contention of learned Counsel for the Petitioners is, nature of dispute narrated in the FIR is civil one. Fact remains that Petitioners were knowing about transfer of title by Accused Sanjay in favour of Respondent No. 3 - Rakesh Sehgal. Respondent No.3 in categorical terms has stated that title stood vested in him as the amount has already gone from his account to the account of Accused Sanjay way back in 1996. Such statement of Respondent No. 3 recorded under Section 161 is part of the charge-sheet. The said statement further reveals that amount of consideration was fixed at Rs 3,11,000/- between Respondent No.3 and Accused Sanjay and Accused Sanjay on 30.04.1996 in the Office of Joint Registrar executed Sale Deed. Copy of the Sale Deed is a part of the charge-sheet wherein title of the land in question stood vested/transferred in favour of Respondent No.3.

11] In the aforesaid backdrop, it can be inferred that Petitioners knowing fully well that title of the suit property was transferred to Respondent No.3 way back on 30/04/1996 still with common intention transferred the same in favour of Respondent Nos. 6 and 7 so as to cheat them by taking shelter of forged revenue record. Once from very inception, conduct of the Petitioners is of practicing fraud and inducement for paying the amount of consideration, the necessary ingredients of the offence of cheating can be inferred against the Petitioners. Both the Petitioners were knowing each other and have jointly approached Respondent No.3 with a proposal for settling the dispute. This speaks of the Accused Ketan being aware about defective title and he has acted alongwith Accused Sanjay in the commission of offence. In this backdrop, even if offence pertains to immovable properties based on transfer of title, what can be noticed is, from the revenue record Respondent Nos. 6 and 7 were made to believe that title vested in Accused Ketan and Sanjay is clear one and instead of carrying out revenue entries in favour of Respondent No.3 after execution of Sale Deed dated 30.04.1996, Petitioners proceeded to transfer the land to Respondent No.6 and 7. As such the aforesaid conduct of the Petitioners will not lead this Court to draw inference that there exists a civil dispute which can be looked into only in civil suit.

The Petitioners while conducting themselves with common intention to commit offence since beginning in calculated manner cheated Respondent Nos. 6 and 7 by pretending clear and absolute title over the properties. As such, since beginning of the sale transaction it has to be inferred that Petitioners had intention to commit offence.

12] For establishing the offence punishable under Section 420 i.e. cheating, there has to be inducement for delivering the property which in this case can be inferred from the factual matrix as is observed hereinabove. In the aforesaid backdrop, it is worth to observe here that jurisdiction under Section 482 of Cr.P.C. and under Article 226 of the Constitution of India cannot be exercised merely for asking. Such jurisdiction is to be exercised with care and in exceptional cases, prayer for quashing of FIR, charge-sheet can be granted. Apart from above, fact remains that Petitioners have an alternate remedy of seeking discharge, as they are already chargesheeted. As such, reliance placed by the Petitioners on the Judgment of the Apex Court in the matter of Anand Kumar Mohatta, cited supra, stating that there exists a civil dispute and as such parties should be relegated to civil proceedings cannot be accepted. Even otherwise, Petitioners are unable to demonstrate that there was effort on the part of Respondent Nos. 6 and 7 to settle the civil dispute so also the criminal proceedings. Rather from the conduct of the Petitioners of executing Sale Deed in favour of Respondent Nos. 6 and 7 without there being any title sufficiently establishes element of *mens rea* and cheating.

13] As such for the reasons stated hereinabove, it cannot be said that there is no basis for initiating criminal proceedings against the Petitioners.

14] In view of the aforesaid observations, no case for quashing of FIR and charge-sheet is made out. Both the Petitions accordingly fail and same stand dismissed.

(SHARMILA U. DESHMUKH, J.) **(NITIN W. SAMBRE, J.)**